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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,167

04/05/2005

Pieter Paul Marc Van Hoecke

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EXAMINER

SAYALA, CHHAYA D

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/01/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/528,167	Applicant(s) VAN HOECKE ET AL.	
	Examiner C. SAYALA	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/17/05&4/5/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/48474 taken with Orban (US Patent 4054677) and Meheus et al. (US Patent 6096353) in view of Ernster (US Patent 4973488), and further in view of Armbruster et al. (US Patent 3849194) and Branen et al. ("Food Additives" published 2001, CRC Press, page 793).

WO '474 teaches a calf milk replacer that includes wheat gluten and maltodextrin, in amounts 1-20 parts and 8-20 parts of wheat gluten (claim 1 and claim 6). The wheat gluten has a DE of 10-35. **Orban** teaches proteinic substance in the milk replacer in an amount 20-95%, fats 0-45%, carbohydrates 1-60%. The protein is hydrolyzed, mineral salts obtained during such hydrolysis are assimilated in the milk, and hydrated lime is used as part of the hydrolysis. See col. 2, lines 30+. The patent also discloses the addition of amino acids such as methionine, lysine and tryptophan, etc. (col. 4, line 47). The mineral salts include salts of calcium, phosphorous and sodium (col. 3, lines 60-65). Col. 4 discloses substantially the same process steps of blending, hydrolyzing, increasing the dry content, addition of amino acids and emulsifying with fat and finally, drying to obtain the final product. **Meheus et al.** also

disclose a calf milk replacer, shown at col. 8 which contains lysine, threonine and tryptophan. Note the amounts of these amino acids which overlap with those claimed. The patent which uses wheat protein (gluten) states at col. 4, line 40 that the protein content is 18-22 wt%.

These three references establish collectively, that the ingredients that applicant claims are commonly used in milk replacers. The amounts also appear to be obvious from such disclosures. What these references do not teach is the low maltodextrin DE values claimed herein, although WO '474 teaches a DE value of 10 which overlaps with the end point of some of the claims. The patents also do not teach using a ring dryer in the process, for drying.

Using ring dryers were already known in the art at the time the invention was made, particularly for hydrolyzed proteinaceous milk materials, as shown by Ernster at col. 8, lines 34-37. This method of drying is shown as being functionally equivalent to other types of drying methods shown at lines 36-37. (See specification at page 9, lines 13-17). To incorporate such a dryer in the primary references would have been prima facie obvious, absent any criticality in this regard.

With regard to the values of DE being lower than 10 in some of the instant claims, according to Armbruster et al. at col. 1, lines 20-26, state the following benefits:

"There is a large potential market for syrups and syrup solids with bland taste, low sweetness and low hygroscopicity at a low DE level. Such syrups, hydrolysates and syrup solids are useful as bases for the preparation of food items as well as for bodying agents and as additives having non-sweet, water-holding, non-hygroscopic characteristics."

Branen et al. also state as follows with regard to maltodextrins with low D.E.:

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"In some instances a maltodextrin may be added to assist with stickiness (tackiness). This is best done with very low DE (<5) maltodextrin products. These same maltodextrins have proven to provide fatlike properties. Because of blandness and solubility of maltodextrins, they are very compatible with the incorporation of instant starches."

Note the table which shows that low DE maltodextrins have high viscosity and low hygroscopicity, both beneficial when used in an emulsion.

Therefore, not only is the use maltodextrins of low DE well-known in the art, their benefits have been well established, so that their incorporation into the primary reference that already teaches maltodextrins up to a value of DE=10, would not have been without motivation, and such would have been obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Sayala whose telephone number is (571) 272-1405. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/

Primary Examiner, Art Unit 1794